IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 341 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMBUJA CEMENT MAZDOOR SANGH

Versus

GUJARAT AMBUJA CEMENT LTD.

Appearance:

1. Special Civil Application No. 341 of 2002

MR TR MISHRA for Petitioner No. 1

MR RV DESAI for Respondent No. 1

RULE SERVED for Respondent No. 2

MR MUKESH R SHAH for Respondent No. 3

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 24/10/2002

ORAL JUDGEMENT

The present petition is filed by Ambuja Cement Mazdoor Sangh being aggrieved of the order passed by the Industrial Tribunal II, Rajkot (hereinafter referred to as "the Tribunal") in Reference (IT) No.101 of 2001 dated 21.12.2001, whereby exh.10 application for interim relief was rejected. It so happened that while deciding the application for interim relief the learned Member of the Industrial Tribunal observed that this case pertains to cement Industries, which is a controlled industry, hence the appropriate Govt. qua this industry is the Central Govt. and as the reference is made by the State Govt., which is not an appropriate Govt. the main reference itself is not maintainable and therefore, the application for interim relief filed under section 10(4) is also not maintainable, hence rejected. Mr.Mishra, the learned advocate appearing for the petitioner submitted that it is true that 'cement industry' is a controlled industry and for a controlled industry, the 'Central Govt'. is the 'appropriate Government' but in case of cement industry the Govt. of India had issued a notification dated 8.11.1977 which reads as under:

"In pursuance of subclause (i) of clause (a) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govt. hereby specified for the purposes of that subclause, the controlled industry engaged in the manufacturer or production of cement, which has been declared as a controlled industry under section 2 of the Industries (Development & Regulation) Act, 1951 (65 of 1951)."

Thereafter, the Govt. of India had issued another notification dated 8.12.1977 which reads as under:

"In exercise of the powers conferred by section 39 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Govt. hereby directs that all the powers exercisable by it under that Act and the rules made thereunder shall, in relation to the cement industry be exercised also by all the State Govts. subject to the condition that the Central Govt. shall continue to exercise all the powers under the said Act and Rules made thereunder --

(i) relating to mines and quarries even where such miens and quarries form part of the cement industry; and

(ii) relating to the dispute between the

employers who are members of the Cement Manufacturers Association, Express Building, Church Gate, Bombay and their workmen represented by Indian National Cement and allied Workers' Federation Mazdour Karyalaya, Congress House, Bombay, which has been referred for arbitration in pursuance of section 10A of the said Act read with notification No.S.O.757-E dated 8.11.1977 (No.S.11025/9/77/ D.I. (A)) in terms of the arbitration agreement published by the notification of the Govt. of India in the Ministry of labour Order No.L.29013/ 2/ 77/ D.O. III (B) dated the 28th November 1977."

2. Mr.Mishra, the learned advocate submitted that in view of these notifications, 'the State Governments' are also the 'appropriate Governments' under the Act.

3. Mr.Mishra, the learned advocate for the petitioner relied upon a judgment of the Honourable the Apex Court in the matter of Shri Yovan, India Cements Employees Union and another v. Management of India Cements Ltd., reported in 1993 AIR SCW 4365. The Honourable the Apex Court while considering the very same question, taking into consideration the aforesaid notifications held that, "Therefore, it is clear that both the 'Central' and 'State Governments' are 'appropriate Governments' under the Act. ..."

4. Mr.Desai, the learned advocate for respondent no.1 herein submitted that these notifications are not applicable to respondent no.1. In view of clause (1) of the notification dated 8.12.1977 respondent no.1 is granted lease for mining lime stone by a State Govt and as respondent no.1 is engaged in mining of lime stone also, said notification has no application to the present case. Mr.Desai asserted and stated these facts at the Bar, there is no affidavit filed to that effect by any officer of respondent no.1. Assuming that respondent no.1 may have an activity of mining lime stone also, it does not take out the case, out of the purview of the notification dated 8.12.1977, because it is not the case of respondent no.1 that the dispute involved in Reference (IT) no.101 of 2001 pertains to workers who are engaged in mining of lime stone. On the contrary Mr.T.R. Mishra, the learned advocate for the petitioner has asserted before this Court that the dispute pertains to workers who are engaged in the activity of manufacturing of cement in the manufacturing plant of respondent no.1. In light of these facts a memorandum issued by the Govt. of India dated 20.2.1978 is very important and the same

is quoted hereunder:

"The Central Govt. has declared cement industry as controlled industry vide Notification No.S.11025/ 9/ 77 DI (A) dated the 8th November 1977 for the purpose of subclause (i) of clause (a) of section 2 of the I.D. Act, 1947. By another Notification No.S.11025/ 9/ 77 DI(A) dated 8th December 1977 the State Governments have been delegated powers for dealing with the Industrial Disputes in the cement factories. Though cement industry has been declared as a controlled industry, C.I.R.M. officers need not intervene in the industrial disputes pertaining to the cement factories. However, they should attend to all the disputes relating to mines and quarries attached to cement factories as usual."

4.1 It is specifically laid down in this Memorandum that though the cement industry has been declared a controlled industry, CIRM officers need not intervene in the industrial dispute pertaining to the cement factories. However, they should attend to all the disputes relating to mines and quarries attached to cement factories as usual. It is clear from the aforesaid text of the Memorandum that it is possible that some establishments may have only cement manufacturing activity while some may have only mining activity, but then there may be few who may have both these activities. For the purpose of this latter type of establishment this Memorandum is important. Assuming that respondent no.1 falls in this latter type, then also its activity of manufacturing cement does form a separate area of activity, to which notification dated 8.12.1977 will be applicable.

5. In view of the above discussion, the order passed by the learned Member of the Industrial Tribunal is quashed and set aside, the Tribunal is directed to decide the reference on merits at the earliest, taking into consideration the age of the reference. Interim order granted earlier by the Tribunal is restored. Rule is made absolute with no order as to costs. Direct service permitted to be effected on the Tribunal.

(Ravi R. Tripathi, J.)

karim